

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3538 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAKODA PARK CO HOUSING SOCIETY

Versus

STATE OF GUJARAT

Appearance:

MR GR UDHWANI for Petitioners

MR SAMIR DAVE for Respondent No. 1

MR GN DESAI for Respondent No. 2

None present for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The learned counsel for the respondent has raised a preliminary objection that this writ petition is not maintainable at the instance of the petitioner as it has been filed against a show cause notice issued under

Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Act 1976') and in connection with the stay order in respect of the land admeasuring 1781.12 sq.mts., being part of F.P.No.38 of T.P.S. No.8, Ahmedabad city. It has further been contended that another order impugned in this Special Civil Application is only interlocutory order made by the authority to restrain the parties concerned from raising any construction on the land in dispute till the proceedings initiated u/s.34 of the Act 1976 are finally decided.

3. The learned counsel for the petitioner Mr. Udhwani does not dispute that the challenge is made in this Special Civil Application only to the Show Cause Notice issued u/s.34 of the Act 1976 and under the interlocutory order the parties are only restrained from raising any construction till the proceedings are finally decided, but what Mr.Udhwani contends is that though the petitioners are interested persons in the matter, they have not been given notice. They are the persons who are in possession of the land in dispute and as such, they have all right to participate in proceedings, but notices have been given to the respondents No.3 to 6 who have nothing to do with the property as they have already been divested of their right, title and interest therein in favour of the petitioners. Mr.Udhwani further contended that the Show Cause Notice is wholly arbitrary and unjustified.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

5. The contention of the learned counsel for the petitioner is not that the respondent No.1 has no jurisdiction to issue the Show Cause Notice in respect of the land in dispute for determination of ceiling limit under the Act 1976. The matter would have been different where the authority issuing the Show Cause Notice, has no jurisdiction to issue the same, but that, as stated earlier, is not the position here. The writ petition against the Show Cause Notice is not maintainable. This Court, otherwise also, ordinarily should not entertain a writ petition against the Show Cause Notice and the reason is very obvious as the effected person to whom the notice has been given or other persons have all right to take their all possible defences and thereafter only on final adjudication of the matter if the decision goes against them, it can be said that cause has accrued to them to avail legal remedy available including petition under Article 226 or 227 of the Constitution of India, as

the case may be. Instead of approaching to the authority concerned, the petitioners have approached straightaway to this Court challenging thereunder the Show Cause Notice. I may proceed with the assumption that the notice was not given to the petitioners but nevertheless the petitioners have come to know about the Show Cause Notice issued under Section 34 of the Act 1976, in the matter through respondents No.3 to 6 and on coming to know about this notice, it was obligatory, appropriate and proper on the part of the petitioners first to approach to the authority concerned with all their defences and submissions rather than to approach this Court at this stage. This precisely has not been done in the present case. It is not the case of the petitioners that they have approached the respondent No.1 and the respondent No.1 has declined to or refused to give them any opportunity of producing defence and making their submissions. So far as the other order under which the respondent No.1 has ordered for maintaining status-quo by restraining the parties concerned from raising construction in respect of the land in question is concerned, it is suffice to say that it is interlocutory order and as such ordinarily this Court should not interfere in such orders. Otherwise also, when the matter is sub-judice u/s.34 of the Act 1976, it is just, reasonable and proper that till the matter is finally decided, status-quo is maintained by the parties concerned in respect of the land in dispute.

6. However, this Court, on 22nd August 1984, has granted interim relief to the petitioners in terms of para 19(B) & (C) of the petition. Para 19(B) of the Special Civil Application reads as under:

Pending admission and the final hearing of this petition, an interim injunction directing the 2nd respondent to grant drainage connection and permission for the use and occupation of the flats in two buildings constructed over the land of final plot No.38/1/B of T.P.Scheme No.8 of Ahmedabad city may kindly be granted.

Para 19(C) of the Special Civil Application reads as under:

Pending admission and the final hearing of this petition, an interim stay staying further proceedings in pursuance of the show cause notice annexure-B may kindly be granted.

7. So far as the stay in terms of para 19(C) of the petition is concerned, only the proceedings have been stayed. So far as interim relief in terms of para 19(B)

is concerned that has been granted by this Court with clear understanding as the Court has, while taking caution made it clear that this interim relief is granted with clear understanding that if ultimately the petitioner comes to be lost no right based on equity or changed position will be raised before me, in order to avoid consequences of rejection of the petition.

8. I am not dismissing this petition on merits but I am not entertaining this petition only on the ground that it has been filed on the ground of Show Cause Notice. So the matter is not adjudicated finally and as such the interim relief which has been granted by this Court in terms of para 19(B) subject to condition and understanding as given out therein shall continue till the matter is decided by respondent No.1. It is further made clear that in case ultimately the respondent No.1 decides the matter against the petitioners, then no right based on equity or changed position will be raised or claimed by the petitioners either before this Court or the said authority.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged subject to aforesaid directions. No order as to costs.

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(sunil)